

DUNCAN MILLER

IBLA 75-241

Decided April 14, 1975

Appeal from decision (W 36675) of the Wyoming State Office, Bureau of Land Management, requiring the filing of a \$1000 bond.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Bonds--Oil and Gas Leases: Communitization Agreements--Oil and Gas Leases: Known Geological Structure

A bond for not less than \$1000 is properly required to be filed when all or any part of the land in a noncompetitive lease is included within the limits of a known geologic structure of a producing oil and gas field. That the land is included in a communitized producing unit does not vitiate that requirement.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Duncan Miller has appealed from a decision, dated November 19, 1974, rendered by the Wyoming State Office, Bureau of Land Management (BLM), which required him to file a \$1000 bond.

Appellant holds oil and gas lease W 36675, effective November 1, 1972, embracing the SE 1/4 SE 1/4 sec. 15, T. 43 N., R. 72 W., 6th P.M., Wyoming. By memorandum of November 1, 1974, the Geological Survey informed BLM that the lands in issue, among other lands, "are within an undefined addition to the House Creek field undefined known geologic structure [KGS] effective August 29, 1974."

That memorandum triggered the decision of November 19, 1974, which raised the rental to \$2.00 per acre and required appellant to file a \$1000 bond "in accordance with 43 CFR 3104.1(b)."

[1] Appellant urges on appeal "that the bond is not required because the lease is in a communitized producing unit."

A memorandum in the file, dated August 22, 1974, confirms that such an agreement was approved on that date, was effective April 1, 1974, and has been designated Com. Agr. NRM-687. Thus the question for resolution is whether a bond for not less than \$1000 is required for a lease, determined to be on a KGS, where the lease has been committed to a communitized producing unit. We first turn to the applicable regulation.

43 CFR 3104.1(b) provides in relevant part as follows:

(b) Known structure or competitive lease bond. The successful bidder for a competitive lease prior to the issuance of the lease must furnish a corporate surety bond in the sum of at least double the amount of the \$2 per acre annual rental but in no case less than \$1,000 nor more than \$10,000 conditioned on compliance with all the terms of the lease, and such a bond also must be filed when all or any part of the land in a lease issued noncompetitively is included within the limits of a known geologic structure of a producing oil or gas field. (Emphasis supplied.)

Neither the regulations pertaining to bonds, 43 CFR Subpart 3104, nor those relating to communitization agreements, 43 CFR Subpart 3105, admit to any exception to the bond requirement of 43 CFR 3104.1(b). See Duncan Miller, A-30628 (November 16, 1966). Cf. Robert D. Snyder, 13 IBLA 327 (1973). It follows that a bond for not less than \$1000 was properly required in the case at bar. Appellant has filed such a bond with the record but filed therewith his assertion that it is "abundantly clear that the bond is not required." He also stated: "However, I do not want to withdraw the appeal." Although the filing of the bond would ordinarily moot the appeal, we have treated the foregoing statements as the equivalent of filing a bond under protest, thus retaining the viability of the appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

